

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
No. 2:10-CR-38-H
No. 2:13-CV-2-H

SHALYN PERNELL BRICKHOUSE,)
Petitioner,)
v.)
UNITED STATES OF AMERICA)
Respondent.)

ORDER

This matter is before the court on petitioner's motion to vacate pursuant to 28 U.S.C. § 2255, which was filed January 15, 2013. The government moved to dismiss, affirmatively raising multiple procedural defenses in its motion. This matter was referred to United States Magistrate Judge Kimberly A. Swank. On March 5, 2014, Judge Swank entered an order denying petitioner's motion to appoint counsel and a memorandum and recommendation ("M&R") recommending dismissal of the § 2255 motion. The government then filed objections to the M&R, notifying the court that since it filed its motion to dismiss in this matter, the government has changed its position with regard to the arguments presented in its motion to dismiss and supporting memorandum. Specifically, the government notified the court it is withdrawing the procedural defenses, including any defenses based on the statute of limitations, and agrees

that petitioner is entitled to relief on his claim pursuant to Dorsey v. United States, 132 S. Ct. 2321 (2012). The government consents to the court granting petitioner's motion to vacate and re-sentencing in accordance with the more lenient penalties of the Fair Sentencing Act of 2010.

Based on the representations and the consent contained in the government's objections to the M&R, the court declines to adopt the recommendation in the M&R, and hereby GRANTS petitioner's motion to vacate. This matter is SCHEDULED for resentencing at the court's September 9, 2014, criminal term. The petitioner shall remain in custody pending the resentencing hearing. The United States Probation Office is DIRECTED to provide the parties and the court with a resentencing memorandum. Furthermore, the Federal Public Defender is hereby directed to appoint counsel to represent petitioner in connection with the resentencing. The clerk is directed to serve a copy of this order upon the Federal Public Defender and the United States Probation Office.

This 8^{JM} day of July 2014.



MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
#26